

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.208 OF 1992
WITH
CIVIL APPLICATION NO.2995 OF 1992
WITH
FIRST APPEAL NO.208 OF 1992**

The State of Maharashtra ..Appellant/Applicant
V/s.
Smt.Sharadabai Ganesh Oze ..Respondent

Mr.Yogesh Y. Dabke, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.952 OF 1992**

The State of Maharashtra & Anr. ..Appellants
V/s.
Shri.Narayan Damodar Bhonde & Ors. ..Respondents

Mr.Yogesh Y. Dabke, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.38 OF 1993**

The State of Maharashtra ..Appellant
V/s.
Shri.Shankar Narayan Naik & Ors. ..Respondents

Mr.Yogesh Y. Dabke, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.115 OF 1994
WITH
CIVIL APPLICATION NO.164 OF 1996
IN
FIRST APPEAL NO.115 OF 1994**

The State of Maharashtra
Thr. Special Land Acquisition Officer ..Appellant
V/s.
Sonyabapu Bala Bidave
Through His Power of Attorney
Chandrakant Tukaram Bidave & Anr. ..Respondents

Mr.Yogesh Y. Dabke, AGP for Appellant/Applicant-State.

Mr.Nikhil Pujari h/f Mr.P.N. Joshi for the Respondents

**WITH
FIRST APPEAL NO.556 OF 1994**

The State of Maharashtra
Thr. Spl. Land Acquisition Officer ..Appellant
V/s.
Shri. Lalchand Moharsing Agarwal & Anr. ..Respondents

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

Mr.Rupesh Lanjekar for the Respondents.

**WITH
FIRST APPEAL NO.601 OF 1994**

The State of Maharashtra ..Appellant
V/s.
Gopala Dharma Udar ..Respondent

Mr.A.A. Palkar, AGP for Appellant/Applicant-State.

Mr.Nikhil Pujari h/f Mr.P.N. Joshi for the Respondent.

**WITH
FIRST APPEAL NO.604 OF 1994**

The State of Maharashtra ..Appellant
V/s.
Krishna @ Mahadu Dharma Hulgunde ..Respondent

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.605 OF 1994**

The State of Maharashtra	..Appellant
V/s.	
Kacharu Govind Mandhe	..Respondent

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

Mr.Nikhil Pujari i/b Mr.P.N. Joshi for Respondent No.2.

**WITH
FIRST APPEAL NO.608 OF 1994**

The State of Maharashtra	..Appellant
V/s.	
Yashwant Dharma Udar (Deceased)	
Thr. Lrs. 1) Eknath Yeshwant Udar	
& Ors.	..Respondents

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.616 OF 1994**

The State of Maharashtra	..Appellant
V/s.	
Kalu Gangaram Farake (Deceased)	
Thr. Lrs. a) Kalubai Kalu Farake & Ors.	..Respondents

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.617 OF 1994**

The State of Maharashtra	..Appellant
V/s.	
Kashiram Soma Udar & Ors.	..Respondents

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.619 OF 1994**

The State of Maharashtra ..Appellant
V/s.
Govind Ragho Dighe (Deceased)
Thr. Lrs 1.Valyabai Govind Dighe & Ors. ..Respondents

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

**WITH
FIRST APPEAL NO.620 OF 1994**

The State of Maharashtra ..Appellant
V/s.
Bhika Rama Dighe ..Respondent

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

MR.Nikhil Pujari i/b Mr.P.N. Joshi for the Respondent.

**WITH
FIRST APPEAL NO.621 OF 1994**

The State of Maharashtra ..Appellant
V/s.
Rama Amruta Udar (Deceased)
Thr. Lrs.
a) Ganpat Rama Udar & Ors. ..Respondents

Mr.Ameet A. Palkar, AGP for Appellant/Applicant-State.

**CORAM : M. S. SONAK, J.
DATE : 03 APRIL 2017**

ORAL JUDGMENT :

1. Heard Mr.Yogesh Dabke and Mr.A.A. Palkar, AGP for the appellants/applicants-State and Mr.Mr.Nikhil Pujari and Mr.Rupesh Lanjekar learned counsels for the respondents-claimants.

2. These appeals relate to the year 1992-1994. They challenge the awards made by the Reference Court in land acquisition cases of the year 1981-1989. Most of these appeals have not even been admitted mainly because no proper steps were taken by the appellant/State Government in the matter of service of notices upon the respondents, clearance of office objections, to bring on record legal representatives of the deceased respondents and such other reasons. Even as of today, in most of the first appeals, the Registry remark is that the matters are unready or under objections.

3. The significant feature of all these matters is that the compensation amount even after enhancement by the Reference Court ranges between Rs.786/- to Rs. 19,188/- in its entirety. This is the compensation payable to the respondents-landlosers for the compulsorily acquisition of their properties between the year 1981 and 1989. The Chart indicating the total compensation amount involving in these appeals is set out herein:-

<u>Sr.No</u>	<u>No. of Appeal</u>	<u>Compensation Amount</u>
1	First Appeal No.208 of 1992	Rs.16,470/-
2	First Appeal No.952 of 1992	Rs.4,365/-

3	First Appeal No.38 of 1993	Rs.505/-
4	First Appeal No.115 of 1994	Rs.975/-
5	First Appeal No.556 of 1994	Rs.10,000/-
6	First Appeal No.601 of 1994	Rs.4,134/-
7	First Appeal No.604 of 1994	Rs.4,113.84/-
8	First Appeal No.605 of 1994	Rs.4,755.60/-
9	First Appeal No.608 of 1994	Rs.3,075.92/-
10	First Appeal No.616 of 1994	Rs.6,045.02/-
11	First Appeal No.617 of 1994	Rs.1,572.18/-
12	First Appeal No.619 of 1994	Rs.5,768.68/-
13	First Appeal No.620 of 1994	Rs.6,220.74/-
14	First Appeal No.621 of 1994	Rs.6,638.94/-

4. In the past, opportunities were granted to the State Government to take steps, so that the matters could be taken up for consideration. However, till date, no proper steps have been taken. That apart, learned AGPs submit that since the State is an impersonal agency, further indulgence may be granted in the matters.

5. There are several matters, in which, the entire compensation does not exceed even Rs.20,000/-. Such matters are pending in the Court, since last several years. However, learned AGPs, expressed their inability to furnish any list of such pending appeals stating that the exercise would involve scrutiny of all the appeals instituted by the State Government in land acquisition matters. The Registry also has its own constraints, though, the Registry is now sorting out year-wise matters. These are first appeals, which relate to the year 1992-1994.

6. Taking into consideration the circumstance that these appeals are of the year 1992-1994, the appeals are unready mainly because of failure on the part of the State Government to take steps, the quantum of compensation ranges between Rs.786/- to Rs.19,188/-, it is not possible to grant any further indulgence to the State Government on the ground that it is an impersonal agency. It is to be noted that the State has compulsorily acquired the lands of the respondent-claimants. Despite, the compensation amount being so paltry, the State has carried the matters in appeal. On account of pendency of these appeals primarily because no steps have been taken by the State Government, the respondent-claimants have been deprived of the meagre compensation awarded to them by the

reference court. Such approach on the part of the State Government can hardly styled as reasonable approach.

7. In pursuing such appeals, the State Government, by now, has surely spent amounts, which are far in excess of what the impugned awards which require the State Government to pay the respondents-landlords for the compulsory acquisition of their lands. The State Government has incurred expenses not merely towards typing, stationary and court fees, but also towards legal fees for pursuing these matters for almost last 25 years. Valuable judicial time has also been consumed since these matters come up on several occasions.

8. It is possible that such appeals are instituted, as other wise, the rate determined by the Reference Court is cited as a precedent in other land acquisition cases, where the stakes might be considerably higher. It is also possible that such appeals are preferred, so that, the pleas of estoppel or waiver are not raised by the parties. In order to address such issues, the State Government, can always formulate some policy on the lines of similar policies formulated by the Central Board of Direct Taxes (CBDT), so that, the interests of the State are suitably protected and at the same time, landlosers, who have been

awarded such meagre amounts of compensation are not unnecessarily deprived of the said amount or forced to contest the appeals before the High Court. The CBDT, has formulated the policies, which discourage the institution of the appeals under Section 260-A of the Income Tax Act 1961, where the tax effect is below the specified limit, which is presently stated to be Rs.20 lakhs. Such policies, which are reflected in circulars address the concerns of the revenue and at the same time, prevent undue hardship to the tax payers, particularly where the stakes are less than specified limit. Such policies also, greatly assist in the reduction of pointless litigation before the higher Courts.

9. The appeals in such matters are also routinely instituted because none of the officials are prepared to take any responsibility. The officials invariably take the stance that it is better that the Court decides such matters. Thereafter, however, hardly any steps are taken to process such appeals, as a result of which, they remain pending for years together.

10. Though not directly relevant, it is to be noted that Section 96(4) of the C.P.C., provides that no appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable

by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [Rs.10,000/-]. Similarly, in terms of Section 102 of the C.P.C., no second appeal shall lie from any decree, where the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-. This means that even in litigation involving private parties, there is curtailment of right to appeal, where the monetary stakes are paltry. There is no reason as to why some policy, consistent with these provisions should not be formulated, particularly in matters of compulsory acquisition of land where, the stakes are so minimal. The entire compensation awarded by the Reference Court in these matters is so meagre that it might not even suffice travel, lodging and boarding expenses of the respondents-claimants to Mumbai. To require the landlosers, whose lands have been compulsorily acquired by the State Government to contest such appeals at this point of time, hardly appears a reasonable course of action to adopt.

11. In *Dilbagh Rai Jarry V/s. Union of India & Ors. - (1974) 3 Supreme Court Cases 554*, the Hon'ble Supreme Court, speaking through Justice Krishna Iyer, after reference to the National Policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957, lamented that the State

Government routinely disregards such policies and institute appeals, which result in staggering litigation costs and staggering litigation volumes.

12. In *Urban Improvement Trust, Bikaner V/s. Mohan Lal - (2010) 1 Supreme Court Cases 512*, the Hon'ble Supreme Court noted that unwarranted litigation by the Government and statutory authorities basically stems from the two general baseless assumptions by their officers. First, all claims against the Government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land. Second, if taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secure a decision in the matter. The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the Governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is

addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals.

13. In *Gurgaon Gramin Bank V/s. Khazani & Another - (2012) 8 Supreme Court Cases 781*, the bank carried the matter of award of compensation of Rs.15,000/- towards death of a buffalo, right upto to the Hon'ble Supreme Court. When the matter came up for hearing on 9 July 2012, the Hon'ble Supreme Court required the bank to file an affidavit disclosing the amount bank had spent till date on the dispute. The Hon'ble Supreme Court noted that the amount spent was Rs.12,950/-, excluding money spent by the bank officers for their to and fro journey from the lawyer's office, District Forum, State Forum, National Commission and finally, the Hon'ble Supreme Court. The amount also did not include the legal fees paid to the advocates before all these fora and the Hon'ble Supreme Court. In such circumstances, the Hon'ble Supreme Court made scathing comments upon the approach of the bank and dismissed the matter with costs of Rs.10,000/-.

14. In land acquisition matters, the Hon'ble Supreme Court has held in *Bhusawal Municipal Council V/s. Nivruti Ramchandra Phalak and Others - (2015) 14 Supreme Court Cases 327*, that the

State should not drag a poor uprooted claimants even for payment of a paltry amounts up to the higher Courts, thereby wasting public money in such luxury litigation without realising that poor litigants cannot afford the exorbitant costs of litigation and, when no superior officer of the State is accountable for such reasonable conduct. The Hon'ble Supreme Court has held that a farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache he will never know how it feels. The risks faced by the farming community are many; they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The Principles of Economics provides for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them.

15. This is what 126th Report of the Law Commission of India, 1988 has to say about the reckless manner in which the State Government routinely files its appeals:

2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the cesti que trust. Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy to do nothingness evidenced by blindly following litigation from court to court. Dismissing a Special Leave Petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The court then suggested effective remedial measures. It may be extracted:

4. *We would like to emphasize that Government must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 Code of Civil Procedure is intended to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit*

will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to.

Nearly a decade has passed since the observations but not a leaf has turned, not a step has been taken, and the Law Commission is asked to deal with the problem!

2.6. A little care, a touch of humanism, a dossier of constitutional philosophy and awareness of futility of public litigation would considerably improve the situation which today is distressing. More often it is found that utterly unsustainable contentions are taken on behalf of Government and public sector undertakings.

(emphasis supplied)

16. The National Litigation Policy formulated by the Central Government also provides that the Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, “*Let the Court decide,*” must be eschewed and condemned. The purpose of the policy is to reduce the Government litigation in Courts so that valuable court time would be spent in resolving other

pending cases. This would assist in achieving the goal of the National Legal Mission to reduce the average pendency time from 15 years to 3 years. This policy provides that prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories, which require assistance from the State Government. Surely, the landlosers, whose lands have been compulsorily acquired by the State and who are now awarded such meagre amount by way of compensation, fall in the category of persons referred to in the National Litigation Policy. If this policy is to mean anything in practice, then, emergent steps are necessary, particularly in first appeals in the present nature.

17. The aforesaid National Litigation Policy was considered by the Apex Court in the matter of ***Urban Improvement Trust, Bikaner v. Mohan Lal*** 2010 (1) SCC 512 in the following manner:

The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby eliminating unnecessary litigation. But it is not sufficient if the Central

Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigations. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants.

18. There is really no case made out at this length of time to grant any further indulgence to the State Government. The appeals are accordingly dismissed.

19. For the aforesaid reasons, as also for the reasons set out in the order dated 6 February 2017 in Civil Application No.5080 of 2001 and connected matters, all these appeals are dismissed.

20. In First Appeal No. 208 of 1992, it appears that the cross-objections were filed by the respondents. However, the cross-objections have already been dismissed for non-prosecution and till date, no restoration is also applied for.

21. The learned AGPs are requested to forward a copy of this order to the Chief Secretary, State of Maharashtra, who shall consider formulating a policy, so that land acquisition matters in which the stakes do not exceed some specified limit, say of Rs.25,000/- or even some higher limit, are either not filed in the High Court or, if already filed, are withdrawn without any further wastage of time.

22. In these matters, however, it is made clear that the rates determined by the Reference Court may not be taken as approved by this Court, particularly, taking into consideration the circumstances in which the First Appeals have been dismissed.

23. All the First Appeals are dismissed. The Civil Applications, if any, do not survive and the same are also disposed of accordingly. There shall however, be no order as to costs.

(M. S. SONAK, J.)